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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

CUSTODIA BANK, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 22-CV-00125-SWS
)	
FEDERAL RESERVE BOARD OF)	
GOVERNORS and FEDERAL RESERVE)	
BANK OF KANSAS CITY,)	
)	
Defendants.)	

**PLAINTIFF CUSTODIA BANK, INC.’S NOTICE AND SUBMISSION OF SUPPLEMENTAL
 AUTHORITY**

Plaintiff Custodia Bank, Inc. respectfully asks the Court to take judicial notice of the attached October 11, 2022 press release from BNY Mellon entitled “*BNY Mellon Launches New Digital Asset Custody Platform*,” attached hereto as **Exhibit “A,”** as additional and relevant authority in support of Plaintiff’s Omnibus Memorandum in Opposition to Defendants’ Motions to Dismiss Plaintiff’s Complaint (ECF Doc. No. 58). While Custodia has been waiting patiently for Defendants to decide its master account application, BNY Mellon, the oldest bank in the Nation, is “now able to hold and transfer” digital assets on behalf of its banking customers. Ex. A, 1. The Federal Reserve Board of Governors (“Board”), one of two Defendants in this matter,

supervises BNY Mellon as its primary regulator in three distinct areas: (1) as a state-chartered member bank, FDIC, *The Bank of New York Mellon*, <https://tinyurl.com/bp5898r3>; (2) through BNY’s bank holding company, 12 U.S.C. § 1841(a)(1); and (3) through BNY’s designation as a Global Systemically Important Bank, Fin. Stability Bd., *2021 List of Global Systemically Important Banks* (Nov. 21, 2021), <https://tinyurl.com/2h96y3fm>.

This announcement directly refutes the central argument advanced by Defendants—namely, that allowing banks with master accounts to provide custodial services for digital assets poses systemic risks that warrant additional evaluation, thus justifying indefinite delay. Bd. Br. 8-9; KCF Br. 8-10. BNY was required to notify its supervisory point of contact at the Federal Reserve prior to engaging in digital asset banking. *See* Fed. Rsrv. Bd., *Engagement in Crypto-Asset-Related Activities by Fed. Rsrv.-Supervised Banking Orgs.* 3 (Aug. 16, 2022) (attached hereto as **Exhibit “B”**) (“A supervised banking organization should notify its lead supervisory point of contact at the Federal Reserve prior to engaging in any crypto-asset-related activity.”). If holding custody of digital assets poses “novel, precedent-setting risk” to the United States financial system, as Defendants suggest in their motions, then the Board could have—indeed, should have—prevented BNY from engaging in such activities, especially since BNY is a Global Systematically Important Bank. 12 C.F.R. § 225.4(a)(2). Instead, this recent development aligns precisely with the allegations of favoritism raised by Custodia’s Complaint, whereby delay in adjudicating Custodia’s master account application “benefits the established financial institutions whose interests are represented on the Board of Directors of the Kansas City Fed” while undermining the competitive advantage of Custodia’s SPDI charter. Compl. ¶ 2; *see also* ¶¶ 8 (delay “benefit[s] existing and entrenched competitors”), 70, 114, 140. It also crystallizes the lack of respect shown by Defendants for Wyoming and the carefully crafted SPDI charter enacted by the State.

For these reasons, Custodia asks that the Court take notice of the BNY Mellon press release attached hereto as Exhibit A.

DATED this 12th day of October, 2022.

CUSTODIA BANK, INC., Plaintiff

By: /s/ Scott E. Ortiz
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing document was delivered to the Court via the CM/ECF System and served upon counsel via CM/ECF electronic transmission this 12th day of October, 2022:

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